

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT ANTHONY,)
)
Plaintiff,)
)
vs.) Case No. 4:10CV02350 AGF
)
CITY OF ST. CHARLES and)
ST. CHARLES POLICE DEPARTMENT,)
)
Defendants.)

MEMORANDUM AND ORDER

This employment discrimination matter is before the Court on Defendants' motion for partial judgment on the pleadings. For the reasons set forth below, the motion shall be denied.

BACKGROUND

Plaintiff filed a one-count complaint alleging that Defendants City of St. Charles and St. Charles City Police Department discriminated against him on the basis of his hearing impairment in violation of the Americans with Disabilities Act ("ADA"). He asserts that Defendants discharged him as of March 3, 2009, by forcing him to retire due to their failure to provide a reasonable accommodation for his disability. Attached to the complaint is a copy of the Charge of Discrimination that Plaintiff filed on June 19, 2009, with the Missouri Commission on Human Rights and the EEOC, asserting the date of the alleged discrimination as March 3, 2009.

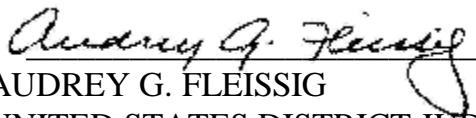
As factual background, the complaint recounts Plaintiff's employment history with Defendants, including being assigned to various positions since 2004 that he was allegedly unable to perform due to his disability, leading up to his giving notice of his intent to retire as of March 3, 2009. Defendants now seek partial judgment on the pleadings as to "any alleged ADA violations occurring before August 23, 2008 [300 days prior to the filing of the administrative Charge of Discrimination] because Plaintiff failed to exhaust his administrative remedies for these allegations."

Plaintiff responds that he is only seeking redress for his March 3, 2009 constructive discharge, that this is the only claim before the Court, and that all other factual allegations in the complaint are just relevant background evidence supporting his claim. He then states, "[a]lternatively, if the Court finds that Plaintiff is seeking recovery for acts prior to August, 2008," Defendants should be estopped from arguing that these claims were not exhausted because these acts by Defendants were improper. In reply, Defendants persist in seeking judgment on "any purported claims other than the alleged March 3, 2009, discharge claim."

The Court concludes that there are no claims upon which to grant Defendants judgment at this point in the proceedings. The complaint and Plaintiff's response to Defendants' motion make clear that his one claim is that he was constructively discharged on March 3, 2009, in violation of the ADA.

Accordingly,

IT IS HEREBY ORDERED that Defendants' motion for partial judgment on the pleadings is **DENIED**. (Doc. No. 12)


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 8th day of August, 2011